

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	Meeting:-	The Cabinet
2.	Date:-	18th December 2013
3.	Title:-	A Strengthened Approach to Enforcement
4.	Directorate:-	Neighbourhood & Adult Services

5. Summary

This report identifies a change in the way in which the Council delivers services in order to maximise the resources available to undertake environmental enforcement activity and improve on the standards of service that are currently being delivered to address other local quality of life issues.

The approach complements the introduction of a South Yorkshire Police Accredited Powers Scheme for specified uniformed Council officers and a reciprocal arrangement for the authorisation of Police Officers and Police Community Support Officers to enforce Council powers with respect of littering & dog fouling.

6. Recommendations

It is recommended that the Cabinet supports the following:

- 6.1 Widening the enforcement capability as detailed in the report.**
- 6.2 The authorisation of the identified additional groups of officers for the legislative duties, associated guidance and enforcement procedures specified in Appendix 2**
- 6.3 With respect to the other legislative provisions identified in the report; appropriate training and development programmes be developed to allow for identified officers to be provided with “expert witness” status in the investigation and provision of evidence.**

7. Proposals and Details

7.1 Background

Against the backdrop of reducing local authority budgets and consequent service reductions, it is timely to consider whether the Council delivers its enforcement activity in the most efficient and cost effective ways, or whether it is possible to raise standards and have a greater impact with the existing available resources.

Across enforcement services there has been significant rationalisation brought by fundamental service reviews eg Community Protection (Enviro-crime & Neighbourhood Warden services) and, as recognised below, creative changes in work practices and job roles have been introduced. These changes are now embedded, but it is critical that services look to greater ways of direct collaborative working and job flexibility to meet demands in targeting effective enforcement services in the most deprived neighbourhoods whilst addressing mandatorily required universal services for the Borough.

Residents and businesses in Rotherham are faced with a range of neighbour and community issues that impact on their life and often intervention is required by different Council officers to resolve the matter and help support behavioural change.

These interventions are normally underpinned by a range of Council powers which enable enforcement action to be taken. The implementation of such enforcement action is reliant on specific officers being provided with authorisations to discharge the Council's powers; this is usually via delegated powers provided by the Council to Service Directors.

7.2 Enforcement Service Alignments

There are established teams with specific authorisations and these are directly related to competency and special knowledge often requiring professional qualification. The approach has a long established traditional background with, at times, the need for several officers across services to refer cases for enforcement to be carried out. This can build in duplication of visit and delays experienced by the customer in the resolution of the matter.

The Council has moved over time to share enforcement activity between teams and this can be exemplified by the authorisation of officers in relation to the Town and Country Planning Act 1990, Section 215 in relation to the loss of amenity from derelict land. This has historically been seen nationally as a responsibility of the "Planning Department", however, in Rotherham, the powers have been undertaken by Environmental Health Officers and Enforcement Officers within the Safer Neighbourhoods service.

Other enforcement methods have in the past included awareness and competence training of Neighbourhood Wardens, Area Housing Officers (formerly "Champions"), Country & Urban Park Rangers and Civil Enforcement Officers (C.E.Os) to enable them to provide evidence to deal with littering and dog fouling offenders. This approach does not require the authorisation of the officers but within the legal

process for the officers to become in-effect direct witnesses to an offence. Their witness statements, consequently, are used to pursue legal intervention eg issuing of Fixed Penalty Notices or, when required, prosecution.

Similarly direct utilisation of Anti-social Behaviour powers by Environmental Health Officers and Enforcement Officers in Community Protection Unit are being linked to traditional statutory nuisance powers to bring a more direct and, often quicker solution to a customer's nuisance. Neighbourhood Wardens, in response to significant local premises based environmental impact, have also been reprioritised to support local investigations of statutory nuisance away from previous street based enforcement.

The review into the internal widening of Council enforcement powers is also appropriate and timely given the Chief Constable's accreditation of the Council's Neighbourhood and Town Centre Wardens with certain police powers including those addressing alcohol related ASB.

7.3 Focus of Proposed Change

A scoping exercise has been carried out in those areas where members of the public require support from Council interventions to help improve their living and neighbourhood standards. It was found that, in the main, enforcement activity will primarily still be held in specific services where the activity is embedded into a job role. It was also found that, in some teams, which had been trained as described above, over time the activity had stopped due to either post holder changes or a re-focusing of their job role during Council re-structuring.

The need to expand the enforcement capacity identified a number of positive reasons to introduce change including;

- giving customers a better deal from speedier and seamless responses;
- providing greater efficiency to address the reduction of capacity within services; and
- giving more focus on early interventions as more of the workforce identify and address issues at the point of occurrence.

Functions which are currently assigned to specific services, but which could be assigned and better integrated into other areas of the Council, include enforcement and legal proceedings relating to:

- littering and dog fouling
- filthy & verminous premises
- rubbish & waste in gardens
- smoke-free premises & vehicles
- on road vehicle repairs and sale
- abandoned shopping trolleys
- Anti Social Behaviour (ABCs/ASBO)
- underage alcohol sales operations
- duty of care for waste management on commercial premises

Detail of the current and proposed Council capabilities are shown in Appendix 1.

Expansion of the enforcement capabilities is designed to improve capacity, customer response and also gain more efficient seamless ways of working. In the case of filthy gardens in Council housing, the changes will also resolve anomalies that are within current policies & procedures (ie Tenancy Agreement).

7.4 Benefit from Proposals

The proposed changes to broaden the enforcement tools available across a greater number of appropriate officers will, apart from bringing a better deal for the customer both in terms of response and resolution, will remove the need for the doubling up of visits and save time in stopping the need to pass cases from one service to another.

This can be demonstrated where for 2011/12 a recorded 571 cases were subject to contacts between the Area Housing Officers and the Environmental Health team with around 12% (70) of these requiring joint visits. A significant number of these interchanges between the two services will relate to activity where the report's proposals will impact eg accumulations in gardens of Council houses. In addition there were 70 recorded similar service requests raised directly by Council tenants to the Environmental Health Team. This could enable an estimated efficiency equating to 0.5 fte officer time to be targeted to priority areas and activity.

7.5 Phased Approach

In order to ensure that the proposed changes are thoroughly worked through and implemented in a successful manner it is proposed to phase the implementation of the changes with initially the changes in authorisation/use of extended powers being introduced in NAS where there is the greater activity of both enforcement and tenancy management. Uniformed officers of Streetpride will also initially be included in the phased introduction.

Consultation with officers and their Trade Unions across the services impacted by these changes has been undertaken and an overall positive response has been received albeit with some localised concerns which have been addressed. This feedback is in-line with the desire to improve processes and working to bring quicker response and resolution to the problems that residents face. In addition Trade Union & staff consultation has been undertaken to assess the need for job profile changes and any impact on the pay & grading of staff potentially affected by the proposals.

The specific proposals about which group of officers will undertake new duties with necessary authorisation are included in Appendix 2.

8. Finance

The proposal to expand the scope of enforcement across more Council services has the potential to release resource. In financial terms, the impact is anticipated to be revenue and HRA budget neutral.

With respect to Council Housing and the use of powers to clear filthy gardens, the recovery of the costs for waste removal would be possible via works in default

functions rather than currently where there is inconsistent recovery via a surcharge on rents. There will be a requirement for a programme of training to introduce knowledge and skills for the enforcement of new areas of legislation; however, this is to be undertaken in-house with any associated costs being contained within existing service budgets.

9. Risks and Uncertainties

The review emphasised that the key aim in developing the scheme is to have the right people, with the right powers, in the right area in order to deliver a better service to local communities.

Constructive discussions between NAS and EDS have taken place and there is a shared understanding for the proposals. A number of issues, however, regarding the expansion of enforcement responsibility were raised and some of these were also reflected in staff and Union consultation. As the scheme has been developed the matters raised have been addressed many being reliant on future training and the proposed phased introduction.

In the widening of the scope of enforcement beyond the existing core function of the officers to be included in the scheme, it is essential there is clarity of ownership and action by the officers taking on the powers. This will be agreed and closely managed by operational managers and directors from both service areas.

Within the first phase, an assessment of the benefits brought and any consequential unhelpful impact on day to day working will be made. Part of this assessment process will be to ensure a co-ordination of the extent and individual case management of enforcement action taken. Whilst this will be enabled from the existing core team for enforcement in Community Protection, a re-working of the support job roles in that team may be necessary. Core duties clearly take precedent over use of wider enforcement powers; these ought not be diluted by discretionary ones and staff need to be reassured of that.

Given these issues it is proposed that the roll out of the widening of the services taking on new enforcement powers should be firstly phased, as a pilot, utilising NAS officers and uniformed Streetpride personnel, it is intended that thus will then be rolled out further in the light of experience gained.

The legal mechanisms to allow officers to take on the identified powers have been considered and, in essence there are two approaches;

- i. For the Directors of Housing & Neighbourhoods and Streetpride, under delegated powers of the Council, to directly authorise identified officers
- ii. For officers, to in effect, be “expert witnesses” to provide evidence as to the offence to authorised officers who would pursue the legal resolution.

In both cases officers in undertaking enforcement activity will need to have proven competency assessments, this including knowledge of the legislative framework and court proceedings which would be required on the occasion of an offender appealing the legal action. The authorisation of officers would enable, even for the

circumstances where evidence is gathered on an “expert witness” basis for the name and address of offenders to be legally provided.

In addition, to counter potential health & safety risks relating to confrontation, it will be essential for all staff to be provided with the skills to make on-the-spot risk assessments about whether to pursue an issue; there will be times when they will need to make judgements about acting on their own, if at all.

We also have to acknowledge that some of the identified officers’ core roles eg Rangers involves public engagement, and that they will therefore naturally be focused more on providing information/education than enforcement as a first resort. This will, therefore, potentially impact on the Council’s “zero tolerance” approach to enviro-crime enforcement. It is important that, wherever possible, a person committing an offence is brought to book via the use of legal powers or advisory challenge in line with the General Enforcement Policy of the Council.

For some of the officers being introduced to the use of the listed powers, there will be a need to broaden their overall understanding and legal/evidential knowledge. For instance, Area Housing Officers currently are involved in civil enforcement, whereas the powers being broadened into those teams are ones where the offence requires investigation and proceedings in criminal law. The difference in the two enforcement regimes will need both the training and development of knowledge and skills to ensure competence.

Careful planning and monitoring will also be required to ensure that staff are fully trained to undertake these responsibilities and that the expectations placed upon them in terms of their breadth of role are reasonable. Further work will also be undertaken to ensure that other support services and administrative processes are slicker and do not add a bureaucratic burden. Monitoring will also indicate whether or not this initiative is providing benefits to the council as a whole, and that there is a positive impact on the outcomes of all contributing services. Consequently it proposed to continually monitor the initiative and formally review it after one year.

10. Policy and Performance Agenda Implications

Tackling Anti Social Behaviour is a key priority for the coming year as set out in the RMBC Corporate Plan

- ***helping to create safe and healthy communities, and***
- ***ensuring people feel safe where they live, particularly that Anti-Social behaviour and crime is reduced and people from different backgrounds get on well together.***

In particular the proposal contributes in ensuring that;

- People feel safe where they live
- ASB and crime is reduced
- People enjoy parks, green spaces, sports, leisure and cultural activities
- Our streets are cleaner

And fits totally within the business methodology of the Council by;

- Getting it right 1st time, reducing bureaucracy and getting better value for money,
- working with partners, and

- having the right people, with the right skills in the right place at the right time

Accordingly ensuring that anti-social behaviour & crime is reduced and that people feel safe where they live is a key objective of the 2013/14 Neighbourhood & Adult Service plan

The strategy takes close account of the developing Government policy drivers regarding crime, disorder, antisocial behaviour and localism, but locally is built from the statutory analysis presented in the latest Joint Strategic Intelligence Assessment which identified Anti-Social Behaviour as a priority for the Safer Rotherham Partnership.

11. Background Papers and Consultation

- Crime and Disorder Act 1998
- Police Reform Act 2002
- The Criminal Justice and Police Act 2001
- The Anti Social Behaviour Act 2003
- South Yorkshire Police Community Accreditation Scheme; Information & Application Pack
- Rotherham MBC Constitution
- Rotherham MBC Legal Services
- GMB & Unison Trade Unions, including the NAS Strategic Consultative Union Meeting (20/11/13), as part of a wider staff consultation
- Anti-social Behaviour, Crime and Policing Bill 2013-14

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APPENDIX 1

Assessment of Need	Legislative Remedy	Enforcement Discharge Options	Current Capacity	Potential Additional Capacity	Enforcement Extension Capability	Officers Identified to Extend Enforcement Capacity
Littering <ul style="list-style-type: none"> • Witnessing difficult 	EPA90 S87	<ul style="list-style-type: none"> • FPN • Prosecution • Witness statement 	NAS CPU (27) (auth) Neighbourhood Wardens (12) (auth) EDS TC Wardens (2) (statement) Streetpride Enf staff (26) (statement)	CPU – 3 Housing - 40 Streetpride Community Delivery Managers Highway Inspectors Civil Enforcement Officers - 11 Park & Greenspaces team – 19 Dog Wardens – 2	Not authorised Statement witness	<u>Phase 1</u> <ul style="list-style-type: none"> • Area Housing Officers – authorisation of officers with discharge via provision of statement • CPU Licensing Enforcement Officers • Civil Enforcement Officers – authorisation of officers with discharge via provision of statement • Dog Wardens <u>Phase 2</u> <ul style="list-style-type: none"> • Highway Inspectors – authorisation of officers with discharge via provision of statement • Park & Green Spaces Officer, Managers & Rangers
Dog fouling <ul style="list-style-type: none"> • Witnessing difficult 	DCO	<ul style="list-style-type: none"> • FPN • Prosecution • Witness statement 	NAS CPU (27) (auth) Neighbourhood Wardens (12) EDS TC Wardens (2)	CPU – 3 Housing 40 Streetpride Community Delivery Managers	Not authorised Statement witness	<u>Phase 1</u> <ul style="list-style-type: none"> • Area Housing Officers – authorisation of officers with discharge via provision of statement • CPU Licensing Enforcement Officers • Civil Enforcement Officers – authorisation of officers with discharge via provision of statement • Park & Green Spaces Officer, Managers & Rangers

Assessment of Need	Legislative Remedy	Enforcement Discharge Options	Current Capacity	Potential Additional Capacity	Enforcement Extension Capability	Officers Identified to Extend Enforcement Capacity
			Enf staff (26) Dog Wardens (2)	Highway Inspectors Civil Enforcement Officers -11 Park & Greenspaces team – 19		<u>Phase 2</u> <ul style="list-style-type: none"> Highway Inspectors – authorisation of officers with discharge via provision of statement Park & Green Spaces Officer, Managers & Rangers
<p>Council Housing Gardens</p> <ul style="list-style-type: none"> tenancy enforcement weakness reluctance to progress injunction or possession speed to remove 1 month WiD only for overgrown gardens and not other eg health related (tenancy agreement flaw) Recharge recovery – building in unrecoverable debt 	<p>Tenancy Agreement</p> <p>EPA90 S59</p> <p>EPA90 S80</p> <p>EPA90 S92A</p> <p>TCPA S215</p> <p>PHA61 S34</p>	<ul style="list-style-type: none"> Possession Injunction Default Agreement <ul style="list-style-type: none"> Prosecution WiD (r) <ul style="list-style-type: none"> Notice Prosecution WiD (r) <ul style="list-style-type: none"> Notice Prosecution WiD (r) <ul style="list-style-type: none"> Notice Prosecution WiD (nr) <ul style="list-style-type: none"> Notice Prosecution WiD (nr) 	<p>Area Housing Officers (36)</p> <p>CPU (23)</p> <p>CPU (23)</p> <p>CPU (23)</p> <p>CPU (23)</p> <p>CPU (23)</p>	<p>n/a</p> <p>n/a</p> <p>n/a</p> <p>Area Housing Officers - 36</p> <p>EDS Planning Enforcement</p> <p>n/a</p>	<p>Authorisation required</p>	<p><u>EPA90 -92A</u></p> <ul style="list-style-type: none"> Area Housing Officers – authorisation of officers with discharge via warning & statutory notice

Assessment of Need	Legislative Remedy	Enforcement Discharge Options	Current Capacity	Potential Additional Capacity	Enforcement Extension Capability	Officers Identified to Extend Enforcement Capacity
Rodent infestations	PDPA S4	<ul style="list-style-type: none"> • Notice • Prosecution • WiD (r) 	CPU (23)	EDS Streetpride Area Managers - 2	Authorisation required	<ul style="list-style-type: none"> • Streetpride Area Managers – authorisation of officers with discharge via statutory notice • Specialist Cleansing Services Operations Manager – authorisation of officers with discharge via statutory notice • Specialist Cleansing Services Supervisor – authorisation of officers with discharge via statutory notice
Abandoned Shopping Trolleys	EPA90 Schedule 4	<ul style="list-style-type: none"> • Recovery • Recharge Notice 	EDS Streetpride – Leisure & Community Services	CPU - 23 Wardens - 12	Authorisation required	<ul style="list-style-type: none"> • Neighbourhood Wardens – authorisation of officers • Environmental Health Officers - authorisation of officers • Enforcement Officers – authorisation of officers • Community Protection Managers – authorisation of officers • Safer Neighbourhood Manager – authorisation of officer
Smoke-free legislation – public premises and vehicles	Health Act 2006 and relevant regulations	<ul style="list-style-type: none"> • FPN • Prosecution 	BRU (10)	CPU (30)	Authorisation required	<ul style="list-style-type: none"> • Environmental Health Officers - authorisation of officers • Enforcement Officers – authorisation of officers • CPU Licensing Enforcement Officers - authorisation of officers • Community Protection Managers – authorisation of officers • Safer Neighbourhood Manager – authorisation of officer
ASB Underage drinking	LA 03	<ul style="list-style-type: none"> • FPN (police) • Prosecution • Review 	TS (2.5)	CPU (23)	No authorisations required	<ul style="list-style-type: none"> • Neighbourhood Wardens – no authorisation required • Environmental Health Officers - no

Assessment of Need	Legislative Remedy	Enforcement Discharge Options	Current Capacity	Potential Additional Capacity	Enforcement Extension Capability	Officers Identified to Extend Enforcement Capacity
<ul style="list-style-type: none"> Trading standards capacity – support 						<ul style="list-style-type: none"> authorisation required Enforcement Officers – no authorisation required Community Protection Managers – no authorisation required
<p>Waste</p> <ul style="list-style-type: none"> Duty of Care on commercial premises Provision of waste receptacle 	<p>EPA90 S34 EPA90 S34A Food Regs</p> <p>EPA S47</p>	Prosecution FPN	CPU (23)	<p>CPU - 3 Neighbourhood Wardens - 12 BRU-10 Streetpride Waste Supervisors - 4 TC Wardens - 2</p>	Authorisations required	<ul style="list-style-type: none"> Neighbourhood Wardens - authorisation required Streetpride Waste Supervisors - authorisation required TC Wardens - authorisation required CPU Licensing Enforcement Officers
<p>Illegal Car Parking</p> <ul style="list-style-type: none"> Private Company Parking Contracts <p>NB not on road</p>	Income generation for Streetpride (delivery capacity issue)	Parking Charge Notice	Civil Enforcement Officers (11)	Neighbourhood Wardens -12	No authorisations required	<ul style="list-style-type: none"> Neighbourhood Wardens – no authorisation required
Repair & sale of Vehicles on the road	CNEA05 S3,4,6 & 7	Prosecution FPN	Highways Inspectors (power not used)	CPU - 18 Neighbourhood Wardens -12	Authorisation required	<ul style="list-style-type: none"> Neighbourhood Wardens – authorisation of officers Environmental Health Officers - authorisation of officers Enforcement Officers – authorisation of officers Community Protection Managers – authorisation of officers Safer Neighbourhood Manager – authorisation of officer

Assessment of Need	Legislative Remedy	Enforcement Discharge Options	Current Capacity	Potential Additional Capacity	Enforcement Extension Capability	Officers Identified to Extend Enforcement Capacity
Council Housing; Filthy & Verminous Premises & articles • Impact on health & nuisance to neighbours • Reputational • Voluntary clean ups • Duplication of visits & attendance of staff	Tenancy Agreement PHA36 S83 & 84	Notice WiD (r) Prosecution	Area Housing Officers (36) CPU (23)	n/a Area Housing Officers - 36	Authorisation required	• Area Housing Officers – authorisation of officers with discharge via warning & statutory notice

Glossary

TCPA – Town & Country Planning Act 1990

PDPA – Prevention of Damage by Pests Act 1949

CNEA05 - Clean Neighbourhoods & Environment Act 2005

EPA90 - Environmental Protection Act 1990

NAS;CPU – Neighbourhood & Adult Services; Community Protection Unit

DCO – The Fouling of Land by Dogs (Metropolitan Borough of Rotherham) Order 2009

PHA36 – Public Health Act 1936

PHA61 – Public Health Act 1961

LA03 – Licensing Act 2003

TS – Trading Standards

FPN – Fixed Penalty Notice

BRU – Business Regulation Unit

Schedule of Legal Powers to be Authorised under Delegated Powers

Legislation	Section	Officers to be Authorised	Delegated Service Director for Authorisation	Additional Capacity
Environmental Protection Act 1990 (Waste Disposal)	Section 34 & 34A Section 47	EDS Streetpride Waste Supervisors Town Centre Wardens NAS CPU Licensing Enforcement Officers Neighbourhood Wardens	Director of Housing & Neighbourhood Services	21 posts
Environmental Protection Act 1990 (Litter Clearing Notice from land)	Section 92A	NAS Housing & Communities Manager Area Housing Managers Area Housing Officers	Director of Housing & Neighbourhood Services	40 posts
Environmental Protection Act 1990 (Littering)	Section 87 & 88	EDS Civil Enforcement Officers Green Spaces Officer Park & Green Spaces Managers Park & Estate Rangers Streetpride Area Managers Specialist Cleansing Services Operations Manager Dog Wardens NAS Housing & Communities Manager Area Housing Managers Area Housing Officers CPU Licensing Enforcement Officers	Director of Housing & Neighbourhood Services	78 posts
Prevention of Damage by Pests Act 1949 (Destruction of rodents)	Section 4	EDS Streetpride Area Managers Specialist Cleansing Services Operations Manager Specialist Cleansing Services Supervisor	Director of Housing & Neighbourhood Services	4 posts

Legislation	Section	Officers to be Authorised	Delegated Service Director for Authorisation	Additional Capacity
Environmental Protection Act 1990 (Abandoned Shopping Trolleys)	Schedule 4 (as amended)	EDS Town Centre Wardens NAS Safer Neighbourhoods Manager Community Protection Managers Principal Community Protection Officers Environmental Health Officers Enforcement Officers Neighbourhood Wardens	Director of Streetpride	41 posts
Health Act 2006 & Smoke Free Regulations 2006 & 2007	Section 6 (no-smoking sign offences) Section 7 (offence of smoking in a smoke-free place). Section 8 (offence of failing to prevent smoking in a smoke-free place). Schedule 2 – Power of Entry	NAS Safer Neighbourhoods Manager Community Protection Managers Principal Community Protection Officers Environmental Health Officers Enforcement Officers	Director of Housing & Neighbourhood Services	30 posts
Public Health Act 1936, (Filthy & Verminous Houses)	Sections 83 & 84	NAS Housing & Communities Manager Area Housing Managers Area Housing Officers	Director of Housing & Neighbourhood Services	40 posts
Clean Neighbourhoods & Environment Act 2005 (Sale & repair of vehicles on street)	Sections 3, 4, 6, and 7	EDS Town Centre Wardens NAS Safer Neighbourhoods Manager Community Protection Managers Principal Community Protection Officers Environmental Health Officers	Director of Streetpride	40 posts

Legislation	Section	Officers to be Authorised	Delegated Service Director for Authorisation	Additional Capacity
		Enforcement Officers Neighbourhood Wardens		
Clean Neighbourhoods & Environment Act 2005 (Dog Fouling)	Sections 59 and 61, and associated regulations and orders relating to dog control	EDS Civil Enforcement Officers Green Spaces Officer Park & Green Spaces Managers Park & Estate Rangers Streetpride Area Managers Specialist Cleansing Services Operations Manager NAS Housing & Communities Manager Area Housing Managers Area Housing Officers CPU Licensing Enforcement Officers	Director of Housing & Neighbourhood Services	76 posts